BEFORE THE STATE OF CALIFORNIA

COMMISSION ON JUDICIAL PERFORMANCE

Inquiry Concerning Judge Elvira S. Austin, No. 140	DECISION AND ORDER OF PUBLIC ADMONISHMENT

This is a disciplinary matter concerning Elvira S. Austin, Judge of the Los Angeles County Municipal Court. The Commission has concluded that a public admonishment is appropriate.

Formal proceedings in this matter were commenced with the filing of the Notice of Formal Proceedings dated December 11, 1996, and Judge Austin filed a verified answer. Special masters were appointed pursuant to Rule 121(b) of the Commission's Rules of Procedure.[1] Pre-trial proceedings were completed and the matter was set for hearing to commence on September 23, 1997.

Prior to the commencement of the hearing, counsel advised the Commission that Judge Austin had agreed to disposition on the following terms:[2]

"Pursuant to Rules of the Commission on Judicial Performance, rule 127, Respondent and Trial Counsel submit the following stipulation in Inquiry Concerning Judge Elvira S. Austin, No. 140:

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[1] The special masters are Justice Rodney Davis of the Court of Appeal, Third Appellate District, Judge Doris L. Shockley of the Yolo County Superior Court, and Judge Sandra Butler Smith of the San Joaquin County Municipal Court in Stockton.

[2] Judge Austin is represented by Arthur Close, Esq., and Trial Counsel for the Commission is Jack Coyle, Esq.

"During the evening hours of May 16, 1995, and the early morning hours of May 17, 1995, Judge Austin attempted to obtain the release from custody of a personal friend in a series of telephone calls to law enforcement agencies.

"In the calls, Judge Austin initially denied she was attempting to use her office, but then repeatedly invoked her judicial position and appeared to order her friend's release on her friend's own recognizance so that her friend would not have to post funds for bail. The judge's statements during the conversations which created this appearance included the following:

> …I want to know what order I need to give to release her…I want to order her released…

> Why is that? …Why is it that we cannot order a release over the telephone?

> Well, who, who is on staff right now that is higher than you that will take a judicial order?

> If I give you a judicial order right now, you are disobeying it.

> …what does it take [for you] to obey a judicial order…?

> …a judge is giving you an order….

> I am the proper authority.

> So, what you're saying is you are disobeying a court order. That's what you're saying…

> Well, who is your supervisor? Where else can I call?

> …well, who is the authority that will take my order?…Knowing that you're talking to a judge, now what do we do next?…

"Judge Austin's conduct was contrary to canon 2A of the California Code of Judicial Conduct, which provides that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and canon 2B, which provides that a judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, and should not lend the prestige of judicial office to advance the private or personal interests of the judge or others.

"'Using the power of the bench to benefit a friend is a casebook example of willful misconduct.' *McCullough* v. *Commission on Judicial Performance* (1989) 49 Cal.3d 186.

"In mitigation, this was an isolated incident and the judge recognizes the impropriety of her actions.

"The parties agree that based upon the foregoing, Judge Austin shall be publicly admonished."

The foregoing stipulation was signed by Judge Austin and her counsel, and by Trial Counsel.

DISCIPLINE

The Commission accepts the forgoing stipulation and concurs that, in the circumstances of this case, disposition by an order of public admonishment is appropriate. The Commission's vote was 11 to 0.

This decision and order shall constitute the order of public admonishment.

Dated: September 23, 1997

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Chairperson